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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,370	07/23/2003	Ned W. Mizelle	79139	8233

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CHICAGO, IL 60603-3406

EXAMINER

BURNHAM, SARAH C

ART UNIT PAPER NUMBER

3636

DATE MAILED: 05/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/625,370

Applicant(s)

MIZELLE ET AL.

Examiner

Sarah C. Burnham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,4-19 and 21-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 29 is/are allowed.
- 6) ☐ Claim(s) 1,4-6,9-11,14-16 and 21-28 is/are rejected.
- 7) ☒ Claim(s) 7,8,12,13 and 17-19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 7/23/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/7/05</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information referred to in the information disclosure statements filed on February 7, 2005 has been considered as to the merits.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 4-5, 9-10 and 14-16 are rejected as best understood with the above cited indefiniteness under 35 U.S.C. 102(e) as being anticipated by Tenenboym et al. (6,612,652). With respect to claim 1, Tenenboym discloses a chair apparatus (10) comprising: a frame having a plurality of frame members (12)(16)(88), the frame members (12)(16)(88) being moveable between a first position in which the seat back frame (88) is in an upright storage position and a second position in which the seat back frame (88) is in slightly reclined use position; a backrest (81) supported primarily by seat back frame member (88); and a seat (22) supported primarily by frame members (16), the seat (22) comprising a seat support (30) and a first resilient seating layer(46), the

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seat support (30) defining an opening (unlabeled) as is best disclosed in Figure 5 and at least a portion of the resilient seating layer (46) extends over the opening so that the first resilient seating layer (46) is capable of extending below the seat support (30), the chair apparatus (10) further including a cover (26) extends over at least a portion of the first resilient seating layer (30) and including a second resilient seating layer (24) extends over at least a portion of the first resilient seating layer (46).

With respect to claim 4, a cover (26) extends over at least a portion of the second resilient seating layer (24).

With respect to claim 5 and 8, a cover (26) forms a sleeve that receives at least a portion of the seat support (30). This attribute is best disclosed in Figure 5 where one can see cover (26) wrapping around seat support member (30) and into engagement with flange (42).

With respect to claims 9 and 12, the seat (22) further comprises a bottom cover (78) extending over at least a portion of the opening (unlabeled) of the seat support (30).

With respect to claim 10 and 13, the bottom cover (78) defines at least one aperture (79b) for air to pass through.

With respect to claim 14, a front cover (82) is attached to a lower portion (89) of the frame member (88).

With respect to claim 15, a rear cover (128) is attached to a lower portion (89) of the frame member (88).

With respect to claim 16, the rear cover (128) includes protruding portions (130).

4. Claims 21-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Burch (5,609,395). Burch discloses a chair apparatus (Figure 9) comprising: a frame (68) having a plurality of frame members (68')(83), the frame members being moveable between a first position (see Figure 9, phantom lines) for storage and a second position (see Figure 9, solid lines) for use; a seat (80) supported by the frame (68')(83); and a backrest (69) supported by the frame (68) and having a backrest support (2)(14)(1) at least partially enclosing at least a portion of the frame (68).

With respect to claim 22, the backrest support (2)(14)(1) comprises at least two shell members (2)(14) that combine to at least partially enclose at least a portion (6) of the frame (68) that supports the backrest (69).

With respect to claim 23, the backrest (69) further comprises a layer of resilient material (1'') over at least a portion of one of the two shell members (2)(14).

With respect to claim 24, the backrest further comprises a cover (1') over at least a portion of the layer of resilient material (1'') and at least a portion of one of the two shell members (2)(14).

With respect to claim 25, the layer of resilient material (1'') has at least two different thicknesses as is best seen in Figure 3, where the thickness of the resilient layer gets narrower moving from top to bottom.

With respect to claim 26, the layer of resilient material (1'') defines a pocket (9) that receives part of shell members (2)(14).

With respect to claim 27, the resilient material (1'') forms a sleeve (9) that receives at least a portion of the at least two shell members (2)(14).

With respect to claim 28, the cover (1') forms a sleeve that receives at least a portion (at the edges thereof) of the at least two shell members (2)(14) and at least of portion of the layer of resilient material (1'').

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tenenboym et al. (6,612,652) in view of Boulva (5,393,126). As disclosed above, Tenenboym et al. discloses all claimed elements with the exception of a first resilient seating layer forming a sleeve receiving at least a portion of the seat support.

Boulva teaches the use of a first resilient seating member (28) in the form of "a sleeve of woven polyethylene fibers" (column 4, line 18) for receiving a seat support (21).

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to replace the first resilient seating member (46) disclosed by Tenenboym et al. with the sleeve shaped seating member (28) taught by Boulva. Such

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a substitution would simplify the manufacturing process and eliminate the need for connector members (52) utilized by Tenenboym et al.

7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tenenboym et al. (6,612,652) in view of Allegro, Jr. (5,887,942). As disclosed above, Tenenboym et al. reveals all claimed elements with the exception of a panel for displaying indicia.

Allegro teaches the use of a panel (106) attached to a seat bottom (104) for displaying indicia (114). The panel (106) doubles as a trash receptacle.

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to add a panel (106) as taught by Allegro to the seat disclosed by Tenenboym et al. Addition of such a panel (106) would help improve the cleanliness of facilities that used the folding seats.

#### ***Allowable Subject Matter***

8. Claim 29 is allowed.

9. Claims 7-8, 12-13 and 17-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Amendment/Arguments***

10. The amendment filed on February 7, 2005 has been considered in its entirety. Remaining issues are detailed in the section above.

Applicant argues that Tenenboym fails to disclose a plurality of frame members, the frame members being moveable between a first position for storage and a second position for use and a seat supported by the frame and moveable relative to the frame. In light of the current amendment, the Examiner has changed her interpretation of the Tenenboym reference and a modified rejection is set forth above. The chair apparatus (10) disclosed by Tenenboym does indeed have a plurality of frame members (12)(16)(88) that are moveable between a storage position, in which the backrest frame (88) is in an upright position allowing theater occupants to easily pass behind the seat in a rear adjacent row, and a use position in which a seat occupant places pressure on the backrest frame (88) pushing it backwards into a partially reclined position. The seat (22) moves with respect to frame members (16)(12) and (88) in that it can be pivoted into a substantially vertical position.

Applicant further argues that Tenenboym fails to disclose moveable members. The Examiner maintains that backrest frame (88) is comprised of multiple members (89)(96)(94)(98) that move with respect to stanchion (12) that is fixed to the floor. The claim requires the frame to have moveable members, but does not require each and every member of the frame to move.

Applicant further argues that the back frame is not part of the frame because it is not moveable between a storage and use position. The Examiner respectfully disagrees. The back frame (88) does indeed lounge backward from a storage position



in which the back frame is positioned substantially upright allowing for theater occupants to easily move along a row adjacent to the rear of the seat to a use position in which the frame is lounged back. Any of the infinite number of lounged backward positions could be considered the use position.

Furthermore, Applicant argues that suspension member (48) does not extend below the seat support (30). The claim simply requires that the suspension member (48) is capable of extending below the seat support. Given the fact that the suspension member (48) is made of an "elastomer fabric" (column 3, line 26) given enough pressure it is capable of extending beneath the seat support either forward or rearward of center member (56).

Applicant argues that Burch does not disclose at least two shell members that combine to at least partially enclose at least a portion of the frame. The Examiner would like to draw Applicant's attention to Figure 6. Plywood layer (3) is received within channel (6), however, plywood panel (7) is not received within the channel (6) and is affixed directly to panel (3) via connection mechanism (12). Therefore, plywood panels (6) and (7) partially enclose one edge of channel (6), which is part of the frame member, between them. Figure 4 shows the overlap between plywood panel (14) and channel member (6).

Applicant further argues that there is not motivation to combine Tenenboym with the teaching of Boulva. The Examiner maintains that using a sleeve structure taught by Boulva would remove the need to attach resilient member (48) at individual attachment locations as disclosed by Tenenboym. Additionally, the materially disclosed by Boulva

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is disclosed as substantially non-extensible but is depicted as having a certain degree of flexibility in Figures 4 and 5, and would therefore not destroy the functionality of the reference.

### ***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah C. Burnham whose telephone number is 571-272-6854. The examiner can normally be reached on M-Th 7:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SCB  
April 26, 2005

  
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